Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

No.

IN THE

Supreme Court of the United States

JOSEPH G. GIVENS, an individual,

Petitioner,

v.

ALABAMA DEPARTMENT OF CORRECTIONS, MICHAEL W. HALEY, individually, et al.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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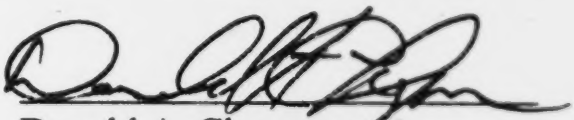
Question Presented For Review

Whether the common law right of "interest follows principle" applies to State prisoners absent a law revoking that right for them and whether the State can revoke that common law right.

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Name of Party	Interest
Hon. Lynnwood Smith	United States District Judge
Michael W. Haley	Defendant
Beltina Carter	Defendant
Charles Hadley	Defendant
Donal Campbell	Defendant
Joseph G. Givens	Plaintiff
Hon. Andrew W. Redd	Counsel for Defendants
Hon. Kevin C. Newsom	Counsel for Defendants
Hon. Donald A. Chapman	Counsel for Plaintiff

Counsel for the Petitioner hereby certifies the above listed persons are known to have an interest in the outcome of this cause.



Donald A. Chapman
Attorney for Petitioner

CERTIFICATE OF TYPE SIZE & STYLE

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Joseph Givens, respectfully petitions this Court to issue a writ of certiorari to review the judgement of the United States of Appeals for the Eleventh Circuit in ***Givens v. Alabama Department of Corrections, et al.***

Citation of Court of Appeals and District Court Opinions

The opinion of the Court of Appeals is reported at 381 F.3d 1064. App. A . The order denying the petition for rehearing is unreported. App. B.
The opinion of the District Court for the Northern District of Alabama is unreported. App. C.

Statement Of Jurisdiction

This is a timely-filed petition for writ of certiorari from the opinion and judgment entered on October 7, 2004, which affirmed District Court's judgment for ***ALABAMA DEPARTMENT of CORRECTIONS, et al.*** and against ***JOSEPH G. GIVENS***. This

court has jurisdiction over this petition pursuant to ***28 U.S.C. § 1254(1)***.

Federal Law Involved In This Case

This petition involves the Taking Clause in The Fifth Amendment, which was made applicable to the States through the Fourteenth Amendment. The Taking Clause provides that " 'private property shall not be taken for public use without just compensation' ". The Alabama Constitution contains virtually identical wording in Article 1, § 23.

STATEMENT OF THE CASE

Joseph G. Givens, Plaintiff, was an inmate in the State of Alabama penal system from 1986 until 2002. He was incarcerated at the Decatur Work Release Center(Center), operated by the Alabama Department of Correction(ADOC), from February 17, 1994 until September 6, 2002, at which time he was released from custody. During the time the Plaintiff spent in the Center he was employed by a "free world" company, a private entity outside of the prison system. The wages, after taxes, earned by the Plaintiff were paid directly to the Center. The Center then deducted the 32.5% that the law allowed them to deduct, even though the law changed to allow 40% the Center continued deducting 32.5%, up until right before he was released when ADOC increased their part to 40%, and the remainder of the Plaintiff's wages were deposited in his "Prisoner Money on Deposit"(PMOD) bank account.

The Plaintiff was allowed to withdraw up to one hundred sixty dollars($160.00) per month to pay for expenses such as medical bills, transportation and other like expenses.

The Plaintiff could withdraw additional amounts if approved by the Center. The rest of his money remained in his PMOD account and was paid to him upon his release from custody. He was paid between fourteen thousand and fifteen thousand dollars upon his release from custody. He used his money in his PMOD account for various expenses he was allowed to pay for and the remainder stayed in his account until he was released from custody. The amount of money he received upon his release did not include the interest earned on that money. Plaintiff never waived his right to interest on his money in the PMOD account nor was he ever given a choice or an option of putting his money in another type of account.

The PMOD accounts are keep in local banks by the different Work Release Centers through out the State of Alabama and these accounts draw interest. The interest earned on these accounts are used by respective Work Release centers through out the State of Alabama.

This case was filed on March 5, 2003. All of the summons were served by the end of March, 2003 except one was returned unexecuted. The defendants were all

represented by the same attorney. The defendants filed a motion to change venue from the Northern District to the Middle District on April 8, 2003. The Trial Court issued an order to show cause in writing by April 25, 2003 why defendants' motion should not be granted. The Defendants filed their answer on April 9, 2003 and filed an amended answer on April 24, 2003. The Plaintiff filed an objection to the Defendants' motion for change of venue on April 25, 2003.

The Trial Court issued an order on April 29, 2003 for both parties to file a brief on the matter of venue and whether the complaint stated a claim upon which the court could grant relief, concerning the 5th Amendment issue in light of ***Hatfield v. Scott***, 306 F.3d 223(5th Cir. 2003), by May 13, 2003.Both parties filed their briefs on May 13, 2003 and the Plaintiff filed a reply brief on May 20, 2003. The Trial Court issued its order and its memorandum opinion on July 14, 2003. App. C.

REASONS FOR GRANTING PETITION

The Eleventh Circuit affirmed the District Court ruling for three reasons.

The first reason was that there was a significant difference between the rights of an inmate and a non-inmate at common law. True, but the differences had significantly changed over the years. It is undisputed that inmates have rights under the United States Constitution and the Alabama Constitution. Inmates do not forfeit their property to the State unless the property was used to commit the crime or the property was paid for from the proceeds of the crime and then only after due process of law. The concept of inmates not having property rights has evolved and changed over the years as society has become more enlightened, but the principle "interest follows principal" has not changed.

The second reason was that the Ninth Circuit case of ***Schneider v. California Department of Correction,*** 151 F.3d 1194 (9th Circuit 1998), framed the inquiry to broadly. The Ninth Circuit reasoned, correctly that the common law did and still does favor

"interest follows principal" and that the common law of centuries past, when prisoner's property escheated to the Crown, does not apply to today's inmates. The Alabama Constitution and codified law gives property rights to all citizens and does not reduce the property rights of inmates unless so stated in the constitution or codified law.

The third reason was that Givens had a ***limited*** property right in the principal. Being limited as to how you use your property or limited access to withdraw the money does not mean that person does not have the common law right of interest follows principal, if so please explain retirement plans (401K), residential property(zoning laws) and many other types property that the government restricts the use of and yet no one would suggest that limited rights deprived the owner of the interest made from the property.

There are certain rights and privileges that a person convicted of a crime loses. All parties agree that the Plaintiff is not entitled to a job through the Work Release Program. Therefore it stands to reason that he is not entitled to earn wages, but once he has earned those wages he is entitled to the interest his money earns. The same is true with his right

to the Work Release Program, he has no right to go into the program but once he is in the program he has the right of due process before he can be removed from the program. The State may take certain rights away from a person but if the State then gives that right back to the person then there are other rights that naturally follow the right that was given back.

Alabama case law is full of cases that stand for the proposition that inmates do not lose all their rights but only have their rights diminished "by the needs and exigencies of the institutional environment". See ***Ex parte Rice***, 565 So.2d 607. 608 (Ala. 1990) quoting ***Wolff v. McDonnell***, 94 S.Ct. 2963. Working outside of the institutions would be one right that the State could diminish but once the State allows the inmate to earn money then that money along with any interest is his.

The State of Alabama has passed legislation that states how the ADOC is to pay for the programs and upkeep of the inmates in the Work Release Program. The legislature has given the ADOC the authority to deduct 40% from the gross wages of each inmate in the program. The statutes do not authorize the ADOC to keep any of the

interest earned on the PMOD accounts. To infer, that because the legislature authorized the ADOC to adopt regulations concerning the disbursement of the inmates earnings, that the ADOC can adopt regulations depriving the inmates of the interest their money earns is to disregard the legislature when the laws they passed clearly limit the money that ADOC can withhold from their earnings to 40% of the inmates earnings. To allow the State to keep the interest would be to allow them to violate the law by keeping more than 40% of the inmate's earnings.

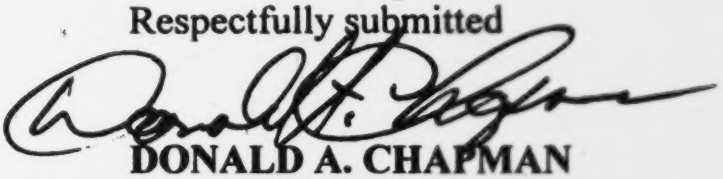
There is a split in the Circuits on the issue that the Court of Appeals' decision addresses. The Ninth Circuit follows the "interest follows principal" common law rule and applies this rule to inmates. ***Schneider v, California Department of Corrections,*** 151 F.3d 1194 (9th Cir. 1998). The Fifth Circuit ruled that there was no need to determine whether the inmate had a property right because there was no taking and the inmate waived what ever right to the interest he had by signing a waiver. ***Hatfield v. Scott,*** 306 F.3d 223 (5th Cir.2002). The Fourth Circuit ruled in ***Wahlefske v. Winston,*** 234 F.3d 179 (4th Cir.2000) that inmates had no right to work therefore the inmates had only the

property rights given to them by statute. Virginia also had a law that stated that any interest earned on the inmates money was to be used for the benefit of the general prison population. The Eleventh Circuit has now ruled in ***Joseph Givens v. Alabama Department of Corrections, et al.*** 381 F3d 1064 (11th Cir.2004) that prisoners do not have any property rights in the interest that is earned on their wages because they had no such property rights at common law and because the State of Alabama only gives the inmates limited property rights in their earned wages. App. A.

CONCLUSION

This Court should grant this petition and issue a writ of certiorari to the United States Court for the Eleventh Circuit to review its judgement in ***Joseph Givens v. Alabama Department of Corrections, et al.***

Respectfully submitted



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